



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MAHN
ATTORNEY GENERAL

Honorable J. S. Murchison, Executive Director
State Department of Public Welfare
Austin, Texas

Dear Mr. Murchison;

Opinion No. 0-5143

Re: Exemption of proceeds of sale
of homestead in administering
old age assistance fund.

This opinion is given in response to your request,
as follows:

"House Bill 611, Acts of the 47th Legislature, Regular Session, Section 20, subsection (6), provides:

"An applicant for old age assistance shall not be denied assistance because of the ownership of a resident homestead as the term 'resident homestead' is defined in the Constitution and laws of the State of Texas."

"House Bill 611 further provides, under Section 20, subsection (5), and Section 21, that in the determination of eligibility the Department must take into consideration all resources available to the applicant.

"Article 3334, Revised Civil Statutes of Texas, provides:

"The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale."

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"The Courts have held in some cases that compensation received from homestead property under condemnation proceedings is likewise exempt.

"In determining eligibility for old age assistance the fact that an applicant has a resident homestead does not effect his eligibility; on the other hand, it is necessary to consider income from the homestead in determining eligibility.

"Because of the many army camps in Texas many old age assistance recipients are being forced to sell their homestead property; therefore, we submit to you the following questions:

"(1) Does the law give 'homestead character' to proceeds from the sale of homestead so as to exempt from consideration such proceeds in determining eligibility for old age assistance?

"(2) If the answer to question one is 'yes', then for what period of time are the proceeds from the sale of the homestead exempt from consideration insofar as eligibility for old age assistance is concerned?

"(3) Would the answers to questions one and two be changed in any manner if the homestead property was sold involuntarily because of Government action?"

(1) The principle of homestead exemptions is a wholesome and deeply-cherished one in Texas, and the universal rule of construction with respect thereto is a liberal one.

Article 3334 of the Revised Civil Statutes declares:

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"The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale."

The obvious purpose of this statute is to aid the general exemption of the homestead from forced sale by giving to the owner thereof the reasonable opportunity to sell the same and reinvest the proceeds in another without jeopardizing the family home.

Where such proceeds of a voluntary sale are, within the six months of the statute, reinvested in other exempt property, such other exempt property, of course, immediately becomes immune from a creditor's forced sale; but unless such proceeds are so invested, they then become liable to creditors as non-exempt property. *Simmons-Newsome Co. v. Malin*, 198 S. W. 281. The proceeds of such a sale during the six months grace and protection allowed by the statute occupy precisely the same status as though such homestead still existed -- that is, they take the place of the homestead for all legal purposes.

Subsection (3) of Section 20 of H. B. 611, Acts of the 47th Legislature, regular session, as quoted by you, forbids the denying of assistance because of the ownership by the applicant of a residence homestead, thus recognizing the principles of exemption above mentioned.

Your first question, therefore, should be answered in the affirmative; to answer otherwise would be to compel the owner of such homestead to forfeit his statutory exemption or be denied deserving assistance. Such is not the policy of the law.

(2) By the analogies above discussed, the exempt character of the proceeds, extending for six months as it does, it would follow that that period would apply in the administration of the old age assistance fund. That is to say, it is only after the lapse of six months from the sale that the Board would be required or authorized to take into account such proceeds as any other money or funds on hand by the applicant.

(3) The answer to (1) and (2) above would be the same in case the sale of the homestead property was involuntary, as by an involuntary or enforced sale.

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This last answer should be qualified to an extent. The statute does not specially exempt the proceeds of an involuntary sale of the homestead, such as the compensation paid upon a condemnation for a public use, or the surplus remaining after the payment of a lien upon foreclosure proceedings. Such proceeds are exempt, however, for a reasonable time, as a part of the exemption of the thing itself, by construction. (Hunter v. Wooldert, 55 Tex. 433).

So, also, it has been held that the proceeds of an insurance policy when collected are exempt for a reasonable time.

What is a reasonable time is a question of fact, under the circumstances of the particular case.

By analogy we think the applicant for assistance should not be charged with such proceeds for at least six months.

APPROVED MAR 25, 1943

Very truly yours

Spencer Allen
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